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NUMBER 91-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

A. Did the Chancery Court of the State of Delaware violate the First Amendment by awarding even limited possession of a hierarchical church's building to dissident former members of the church?

B. Must the church await a final judgment on the merits before seeking redress for the damage done by the Chancery Court's preliminary injunction?

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IV. OPINIONS BELOW

The 25 June 1991 order of the Supreme Court of the State of Delaware--denying, without a separate opinion, certification of Petitioners' appeal of the Chancery Court's interlocutory 11 June 1991 order--is set forth in the appendix at A01-A04.

The transcript of the Chancery Court's 19 June 1991 denial of Petitioners' motion for certification of their appeal of that court's 11 June order is on file in both that court and the state Supreme Court.

The 11 June 1991 letter opinion of the Court of Chancery of the State of Delaware --denying Petitioners' motions for (1) dismissal for failure to state a claim for which relief might be granted and (2) dissolution of a preliminary injunction entered on 15 May 1991--is on file in both those Courts. The 15 May opinion is unof-

ficially reported at [1991] Del.Corp.Lit. Rep. 8741 (Del.Ch. 1991) and on file in both Delaware courts.

V. JURISDICTION

On 25 June 1991 Delaware's court of last resort denied review of the lower state court's 19 June ruling, which interlocutory order was subject to discretionary review under Del.Sup.Ct.R. 42 [A14-A18]. Petitioners and Respondents were the only parties to those proceedings.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(a) and this Court's Rules 10 (b)&(c) and 13.1: The Delaware Supreme Court's 25 June decree violated Petitioners' title, right, and privilege --set forth in the First Amendment to the Constitution--to use their church building and govern their church without interference by civil/judicial authorities.

By allowing the Chancery Court's ruling to stand, Delaware's court of last resort decided this First Amendment federal question: (1) in direct conflict to the decision of the United States Court of Appeals for the District of Columbia Circuit in Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), a case factually the same as this one and involving the same church, and (2) in direct conflict to this Court's applicable decisions from Watson v. Jones, 80 U.S. 679 (1871), through Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), Maryland & Virginia Eldership v. Church of God, 396 U.S. 367 (1970),

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), Jones v. Wolf, 443 U.S. 595 (1979), and Little v. First Baptist Church, 475 U.S. 1148 (1986).

VI. CONSTITUTIONAL PROVISIONS

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VII. STATEMENT OF THE CASE

In the middle of Wilmington, Delaware, in a terraced, arbored plaza next to the J. Caleb Boggs Federal Building (where the District Court sits) and facing the Carvel State Office Building and the City/County Building (for Wilmington and for New Castle County), stands a large gold-on-blue metal state historical plaque reading:

> GRAVESITE OF
> BISHOP PETER SPENCER (1779-1843)
> AND HIS DEVOTED WIFE, ANNES
> Born a slave, Bishop Spencer was the father of Delaware's independent Black church movement. In 1813, he founded the Union Church of Africans, presently known as the African Union Methodist Protestant Church. The mother AUMP church stood on this site from 1813 to 1970. The Union American Methodist Episcopal Church (UAME), formally organized in 1865, traces its origins to Spencer. He was also the founder of "August Quarterly" in 1813, one of the oldest Black folk festivals in America.

The record in the Chancery Court supports all the facts set forth on that

plaque and shows that on 18 September 1813 Spencer recorded Articles of Association for the African Union Church providing, inter alia:

> Members of the said Church (now duly elected) and their Sucesors duly qualified and elected as hereinafter directed shall be Trustees for the purposes and with the powers and privileges hereinafter granted of the said Corporation and of all and every other Church or place of meeting for public worship shall at any time hereafter become the property of this Corporation. . . . The said Corporation shall have, hold, possess and enjoy the temporal property which they have at this time or shall hereafter acquire. In trust for the Religious uses of the Ministers and Preachers of the said "Union Church" for them and their African Brethren and their descendants of African Race, and also for the Ministers and Teachers of the African Brethren duly licensed and ordained according to the Discipline adopted by this corporation.

Numerous popular and scholarly publications, several of them in evidence in the Chancery Court, show that this charter was that not only of the denomination but also of the mother church congregation,

the only church building Spencer owned then. Over the years many more local churches were established, and by 1991 there were forty congregations in six states. Most or all of the local churches were separately incorporated and held legal title to the buildings in which they met, but all were governed by the denomination's Book of Discipline and sent representatives to the various conferences that are the legislative and judicial bodies in Methodist churches.

In 1924 the mother church filed a separate certificate of incorporation changing its name to "Mother African Union First Colored Methodist Protestant Church." In 1941 the denomination filed a separate certificate of incorporation changing its name to "African Union First Colored Methodist Protestant Church," and in 1953 it filed an amendment changing its

name to "The Conference of African Union First Colored Methodist Protestant Church." At some time the Conference started using the name "African Union Methodist Protestant" Church, and so did many of the local churches, so the denomination is commonly known as the AUMP Church, although that name was never officially recorded.

When the part of Wilmington where the mother AUMP church stood was rebuilt, the Church used the proceeds of the sale of the land that is now Spencer Plaza to buy in 1969 an existing church building from the Second Baptist Church of Wilmington, taking title in the name of the Mother AUFCMP Church corporation. That building has since been used as the mother church for the AUMP denomination; its ownership is the crux of this case.

As shown by the opinion, findings of

fact and conclusions of law [A05-A09], and judgment order [A10-A11] in Conference of African Union First Colored Methodist Protestant Church v. Cleaver, C.A.No. 2960-53, Morris, J. (D.C. July 25, 1955), aff'd, 240 F.2d 57 (D.C. Cir. 1956), which are in evidence in the Chancery Court, in about 1953 a majority of the members of St. Paul AUFCMP Church in Washington, D.C., voted to secede from the AUMP Church because they were unhappy the Bishop would not appoint the pastor they wanted.

St. Paul's was separately incorporated in the District of Columbia and held legal title to the church building it used. Its members purported to change the name of their church to "St. Paul Methodist Church"; although they had always before abided by the AUMP's Book of Discipline and employed the pastors assigned by the

Presiding Bishop of the AUMP, they now stopped cooperating with the AUMP.

The then-Bishop sued St. Paul's and its new officials to require its building to be used for the denomination's purposes, not the dissidents'. In 1955, after trial, the District Court ruled the AUMP was a hierarchical church, so under the rule first set forth in Watson v. Jones, 80 U.S. 679 (1871), control had to be awarded to the denomination. In 1956 the Appellate Court explicitly affirmed those findings and conclusions in its one-page reported opinion. 240 F.2d at 57.

Minutes of a 1986 meeting of the trustees of the Mother AUMP Church, in evidence in the Chancery Court, show they were dissatisfied the then-Bishop would neither appoint the pastor they wanted nor meet with them to discuss his refusal, and they decided to seek ways to withdraw from

the AUMP Church, which they labeled a "dictatorship." At about the same time, their nominee, one Rev. Albert Norwood Jarman Sr., was an unsuccessful candidate for the office of Bishop Coadjutor, the officer who would become Presiding Prelate when that office next became vacant. Petitioner Delbert L. Jackson won the election and later became Presiding Prelate, which he has been for about three years now.

Like his predecessor, Bishop Jackson refused to appoint Jarman pastor of the Mother Church because Jarman, a married man, was widely reputed and believed to be having an affair with one Jane J. Gibbs, a trustee of the Mother Church. Because the Mother Church was used for so many denominational functions, and its pastor was therefore highly visible, Church officials decided to appoint Jarman to a church in

Pennsylvania where his conduct would not create so much scandal.

The continuing friction between Jackson and the Jarman-Gibbs faction came to a head in March 1991 when a former AUMP minister died, and his widow asked that he be buried from the Mother AUMP Church, whose pastor he had once been. In the meantime, however, he had left the AUMP Church amidst unfavorable publicity, and the Bishop and Conference both ruled, as the Book of Discipline authorized them to do, that Rev. Smith's funeral could be held at either of two other specific AUMP churches, but not at the Mother Church. The trustees of the Mother Church held the funeral there anyway, on the day before Easter, and thus created a confrontation with the AUMP hierarchy.

At a regular meeting in January, the Conference's General Session had adopted

a resolution, thus making it part of the Book of Discipline, specifying that any property titled in the name of a local AUMP church was nevertheless held in trust for the denomination. At the Annual Conference on 6 April 1991, that body authorized, as provided in the Book of Discipline, title to all real estate held in the names of the local churches to be transferred to the name of the Conference, which is to say the denomination, and authorized the pastor of each local church to execute the deed. After that meeting, the pastor (and ex officio trustee) of the Mother Church executed a quitclaim deed conveying title to the Mother Church building to the Conference; that deed was properly recorded on 8 April. (The Recorder of Deeds happens to be one of Respondents' attorneys in this case.)

On 8 April Bishop Jackson, with the

concurrence of three Elders, removed the Mother Church's pastor, as the Book of Discipline authorized them to do, for insubordination in not paying the Mother Church's assessment, due at the Annual Conference on 6 April. On 9 April the Bishop appointed Rev. Thomas Moon, a former pastor of the Mother Church whose removal the congregation had opposed at the time, to be the new pastor.

Although the Book of Discipline prohibits their doing so, the Mother Church's nine trustees called a special meeting for 9 April to discuss withdrawing from the AUMP Church. By their own admission, fewer than half the at least 170 members attended, so there was no quorum, and the vote was 68 in favor, 10 opposed, and 4 abstaining.

When Pastor Moon arrived at the Mother Church on 9 April, the dissidents would

not let him enter and called the Wilmington police to keep him out. When he returned later, he found the locks had been changed, so after consultation with the Bishop and their attorney, he had a locksmith change the locks again and hired a security guard to keep any unauthorized persons from taking possession.

The Pastor and Elders revoked the membership of the nine former trustees of the Mother Church, which necessarily terminated their status as trustees, too. Pastor Moon and three faithful members of the Mother Church congregation met by telephone and elected the three members trustees; the next two Sundays the remaining membership ratified their election.

Beginning on 10 April Pastor Moon presented proper corporate resolutions to the bank holding the Mother Church's accounts, to change the signatories on the

accounts to the new trustees, but the bank refused to cooperate, and the former trustees have so far managed to keep those funds away from the AUMP Church, an amount Petitioners have heard is about $30,000.

On 18 April two of the former trustees, "individually and on behalf of all others similarly situated," filed suit against Petitioner Jackson in Chancery Court and moved for a temporary restraining order to get immediate possession of the building. At oral argument on 19 April, and in Petitioner Jackson's brief opposing the TRO filed that same day, he raised the First Amendment federal question at issue here, citing two Delaware lower-court cases as well as Watson v. Jones, 80 U.S. 679 (1871), Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), Maryland &

Virginia Eldership v. Church of God, 396 U.S. 367 (1970), and Jones v. Wolf, 443 U.S. 595 (1979).

Vice Chancellor Jacobs chose not to address the First Amendment issue and kept directing Petitioners' counsel to address the issues "as if" it were strictly a corporation-law case. He granted the plaintiffs a temporary restraining order allowing them to use the Mother Church building at several specified times a week, including most of Sunday. They immediately began holding services led by persons not approved by the AUMP, a violation of the Book of Discipline.

In Petitioner Jackson's 3 May brief opposing the motion for a preliminary injunction and at oral argument on 6 May, he again raised the First Amendment issue and pointed out that the plaintiffs lacked standing to bring the suit, and the Bishop

was not the proper defendant. The Vice Chancellor then suggested he make the Conference a defendant and the Mother Church corporation a plaintiff, and Respondents' counsel so moved. In his 15 May opinion granting a preliminary injunction on the same terms as the TRO, the Vice Chancellor again declined to address the Constitutional issue, saying the question was "which corporation . . . owns and is legally entitled to control the contested properties."

On 6 May Petitioner filed his motion for dismissal for failure to state a claim, for the reasons given in his 3 May brief and at oral argument on 6 May. Petitioner also raised the facts of Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), but the Vice Chancellor refused to allow argument

because, he said, the facts did not appear in the reported opinion and the case had been 30 years ago anyway.

Because it had been so long since that case was closed, the record was archived, and it took Petitioners about six weeks to have it retrieved by the District Court and get copies of the pertinent parts. Petitioners then, on 5 June, moved for dissolution of the 15 May preliminary injunction, arguing that the Constitution required dismissal of the suit.

On 11 June the Chancery Court denied Petitioners' motions to dissolve the injunction and for dismissal. On 17 June Petitioners applied to the Chancery Court for certification to appeal that interlocutory order and also filed notice of the appeal in the state Supreme Court. At the Chancery Court's hearing on 19 June Petitioner again argued that the

Constitution deprived the court of jurisdiction to interfere in this controversy, but the court denied certification.

To their notice of appeal Petitioners had attached, as the Supreme Court's Rule 42(d)(iv)(A) required [A17], a copy of the application to the Chancery Court, which set forth this Court's controlling decisions. In their supplemental notice of appeal filed 24 June Petitioners again cited Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), and asserted the federal Constitutional question.

In its 25 June order the Supreme Court refused to review the case and did not even address the federal question.

Trial is now scheduled to begin on 16 September, the dissident former members are still holding non-AUMP services in the

Mother Church, Petitioners have no idea what has happened to the money from the Mother Church's bank accounts, and at least half a dozen other congregations have undertaken legal action to take their buildings out of the AUMP.

The only attention anyone has paid to Petitioners' counsel's repeated efforts to raise the federal issue is that ever since, on behalf of St. Paul AUFCMP Church of D.C., she filed a civil rights suit against the nine former Mother Church trustees in federal court in Delaware, to protect St. Paul's beneficial interest in the Mother Church, Respondents' counsel, the federal judge, and the vice chancellor have jointly and severally threatened her and her clients with sanctions for supposedly violating the Chancery Court's 19 April TRO.

VIII. ARGUMENT FOR ALLOWING WRIT

As discussed at L. Tribe, American Constitutional Law §14-12 (1978), this Court first announced in Watson v. Jones, 80 U.S. 679 (1871), its position that in a dispute over church property, a court must defer to the highest applicable authority in a hierarchical church.

It cannot be doubted the AUMP Church is hierarchical: In Watson, the Court mentioned as examples of hierarchical churches "the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian." 80 U.S. at 729. As Judge Morris ruled in 1955, the AUMP clearly meets the Court's criteria for a hierarchical church because the pastors of the local churches are appointed by the head of the denomination, all members conduct their affairs according to the Book of Discipline, and

there is a hierarchy of legislative and judicial conferences governing the Church.

Watson was announced as a matter of common law, however, and it was not until Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), that the Court announced the same result was required by the First Amendment's free exercise and establishment clauses, made binding on the states by Cantwell v. Connecticut, 310 U.S. 296 (1940), and Everson v. Board of Education, 330 U.S. 1 (1947).

Kedroff invalidated a New York state statute that purported to transfer control of a church in New York, but when the New York courts tried to achieve the same result, this Court applied the same rule in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960). Here, too, it is Delaware's judiciary, not its legislature, that is depriving the AUMP of control of a

particular church because the court does not approve of the way the hierarchy is governing the local church. The Chancery Court has, without due process and without compensation, taken the Mother Church from the AUMP Church and given use of it to the dissident former members.

The teaching of Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), and Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), is that

> once a hierarchical church's highest ecclesiastical tribunal has interpreted its own constitution . . . such an interpretation is binding on all civil courts. Issues of church organization, no less than questions of church procedure or doctrine, are beyond civil authority.

L. Tribe, supra at 878-79 (footnote omitted).

> [R]eligious organizations have an interest in autonomy in ordering their

> internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. . . . [T]hese organizations must be protected by the (Free Exercise) (C)lause.' . . . [F]urtherance of the autonomy of religious organizations often furthers individual religious freedom as well.

Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 341-42 (1987) (citations omitted) (Brennan, J., with Marshall, J., concurring).

> Because religious organizations may own property and enter into contracts, it is inevitable that they will become involved in legal disputes. However, where the use of property or the terms of contracts necessitate reference to ecclesiastical principles or authority, courts must exercise extreme care to avoid taking sides . . . [T]he court ordinarily must discern from the relevant canonical law what body is authorized to make a particular decision within the church, and . . . what decision that body has reached. Having done so, the court may not inquire whether the decision was made arbitrartrarily or whether it conflicts with the ecclesiastical precepts of the organization.

Little v. First Baptist Church, 475 U.S.

1148, 1149 (1986) (citations omitted) (Marshall, J., with Brennan, J., dissenting).

The purpose of a preliminary injunction is to preserve the status quo pending a final decision in litigation. When Respondents sued Petitioner Jackson, the status quo was that the Conference held legal title to the Mother Church building, had a new pastor in place to minister to the congregation, had full possession of the building, and had excommunicated the former trustees--all as authorized by the Book of Discipline and the Conferences whose members were elected from the various congregations, including the Mother Church. The Chancery Court's TRO and preliminary injunction radically changed that situation by allowing the dissident former AUMP Church members to use the Mother Church building for

activities explicitly prohibited by the Book of Discipline.

In refusing certification of the interlocutory appeal, the Delaware Supreme Court said [A03] Petitioners were merely attempting to seek review of the Chancery Court's preliminary injunction after the time for appealing its entry had expired. To a certain extent, they were, but Petitioners had little choice in the matter: The vice chancellor had refused to let them raise Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), without that court's records before him, and by the time Petitioners were able to get those copies, the time for the appeal had expired.

It is axiomatic, however, that in equity an issue may be raised again when circumstances change, and circumstances

changed once Petitioners had certified copies of the District Court's ruling, after trial, that the AUMP Church was a hierarchical denomination or "general" church founded in 1813, of which the local churches were subordinate members or units. The Chancery Court had held on 15 May that it was "[t]he Mother Church [that] was incorporated as the 'African Union Church' on September 18, 1813" and that the denomination was not founded until "[t]he Conference was incorporated on September 19, 1941." Leaving aside the question of full faith and credit for the D.C. court's findings, the evidence in the Chancery Court's own record supported Judge Morris's findings and refuted Vice Chancellor Jacobs's.

Even if the only order Petitioners were appealing were the denial of their motion to dissolve the preliminary

injunction, that order still fell within the scope of Del.Sup.Ct.R. 41 & 42 [A12] and was subject to appeal because the preliminary injunction decided the parties' substantial rights to the property pending the litigation and was in direct conflict with the D.C. appellate court's decision.

But it was not only the denial of that motion Petitioners appealed: The same order denied their motion to dismiss for failure to state a claim, an issue Petitioners had addressed in briefs and arguments opposing the TRO and the preliminary injunction. As even the Vice Chancellor advised Respondents' counsel, at an office conference on 10 June, the appeal of the denial of the motion to dismiss was timely and was based on different legal theories than the appeal of the refusal to dissolve the injunction.

Although Petitioners' counsel clearly

raised the Constitutional issue in their application for certification--and argued at lines 12-14 of page 18 of the transcript of the 19 June hearing: "We do dispute the Court's jurisdiction because we believe that this is one of those church cases where the civil courts cannot interfere"--the Delaware Supreme Court did not even address the denial of the motion to dismiss, much less the Constitutional issues involved.

Granting the motion to dismiss would probably have terminated the litigation, or at least substantially reduced further litigation, so the criteria of Rule 42(b) [A15] were met. When the Chancery Court entered its preliminary injunction, its opinion was in direct conflict with the decision of the D.C. appellate court and earlier decisions of the Chancery Court itself, not to mention the controlling

decisions of this Court, so the criteria of Rule 41(b) [A12] were met.

All the material facts are in the record and undisputed--the same kind of evidence that persuaded Judge Morris the AUMP is hierarchical and all property titled in the local churches is beneficially owned by the denomination. There is no reason to waste judicial resources on a trial, and in the meantime all the other AUMP local churches are being torn apart as members take sides in this internecine litigation.

This case is ripe for consideration by this Court now: The factual record is complete, all the procedural requirements have been satisfied, and judicial economy and social policy cry out for prompt resolution of this situation.

Respectfully submitted,

K. Kay Shearin

K. KAY SHEARIN
Attorney for Petitioners

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants-Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs-Below,
Appellees.

No. 229, 1991

Submitted: 24 June 1991
Decided: 25 June 1991

Before CHRISTIE, Chief Justice,
MOORE & WALSH, Justices.

O R D E R

This 25th day of June, 1991, it appears that:

(1) Defendants-below, appellants, The Conference of African Union First Colored Methodist Protestant Church and Delbert L.

Jackson (the "Conference"), have petitioned this Court to accept an interlocutory appeal from an order of the Court of Chancery dated June 11, 1991 which refused to dissolve a preliminary injunction entered by the Court of Chancery on May 15, 1991 at the behest of the plaintiffs-below, appellees, Mother African Union First Colored Methodist Protestant Church, Morris A. Comegys, and Sara B. Gardner (the "Mother Church"). The parties are disputing their respective rights to control certain church properties located in Wilmington, Delaware.

(2) The Conference has filed a supplementary notice of appeal which reflects that on June 19, 1991, the Court of Chancery refused to certify the interlocutory appeal to this Court.

(3) In its ruling of May 15, 1991, the Court of Chancery granted a prelimin-

ary injunction which had the effect of permitting the disputing factions to continue using the church property until a final ruling on the claim of the Mother Church that title to church property resides with the trustees of the Mother Church and not the Conference. The Conference did not appeal the May 15, 1991 ruling, nor seek reargument as to that ruling. Its subsequent "Motion for Dissolution of Preliminary Injunction" filed on June 5, 1991 was simply an attempt to reargue the merits of the May 15 decision and resulted in the Chancery Court's order of June 11, 1991. In effect, the Conference now seeks an interlocutory review of the Court of Chancery's May 15, 1991 ruling although the time for seeking such review under Supreme Court Rule 42(d) has expired.

(4) Apart from the apparent untimeli-

ness of the present application, it is clear that neither the June 11, 1991 nor May 15, 1991 ruling of the Court of Chancery meet the criteria of Supreme Court Rule 42(b). Although the Conference suggests that the rulings of the Court of Chancery sustain the controverted jurisdiction of the trial court, the Court of Chancery's jurisdiction over this dispute is manifest.

NOW, THEREFORE, IT IS ORDERED that the petition for interlocutory appeal is REFUSED.

Refusal of the interlocutory appeal renders moot the Conference's "Motion for Expedited Scheduling" and the Mother Church's "Motion to Strike and/or Seal Part of the Record and for Sanctions for a Performance Deficiency."

BY THE COURT:

/s/ Joseph Walsh
Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

Civil Action No. 2960-53

Filed: 25 July 1955

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having considered the briefs filed by the parties upon a motion to dismiss the complaint made by the defendant on March 27, 1955, and having denied the motion, the above action came before the Court for trial on June 2, 1955. The Court, upon the entire record in the case, including testimony and oral argument,

makes the following findings of fact and conclusions of law.

I. Findings of Fact

1. African Union First Colored Methodist Protestant Church is a general church organization, or religious denomination, tracing its origin back to 1812, and having a Book of Discipline adopted by the denomination formulating and prescribing structure and relationship of subordination of member churches, or units, to the general religious organization.

2. One of the plaintiffs, viz., The Conference of African Union First Colored Methodist Protestant Church, a corporation organized under the laws of the State of Delaware, is the corporate embodiment of said general church organization. Another plaintiff, Richard Gross, is a member of St. Paul African Union First Colored Meth-

odist Protestant Church and has adhered to and continued to adhere to the Discipline and authority of the general church organization, or religious denomination. The third plaintiff, the Reverend Reese C. Scott, is president of the general church organization.

3. The defendant, St. Paul African Union First Colored Methodist Protestant Church, is organized as a corporation under laws in force in the District of Columbia, is a subordinate member church, or unit, of the said general church organization, or religious denomination, has subscribed and adhered to the Book of Discipline of said denomination, dedicated its property to the uses and purposes of said religious denomination, and for many years prior to June 15, 1953, received and employed pastors from said general church organization.

4. The property of the defendant corporation consists principally of a church building, with appropriate furniture and furnishings, situate at No. 326 I Street, Southeast, in Washington, District of Columbia.

5. On or about June 15, 1953, defendant severed "all connections" with the general church organization, the African Union First Colored Methodist Protestant Church, changed its name from "St. Paul African Union First Colored Methodist Protestant Church" to "St. Paul Methodist Church" and diverted said church property to the uses and purposes of the new and different "St. Paul Methodist Church." It also refused to permit the church property to be used by ministers of the general church organization.

II. Conclusions of Law

1. The Court has jurisdiction of this

action to enjoin the diversion of property, the legal title to which is held by a member church, or unit, of a general church organization, and which property had been dedicated to the uses and purposes of such general church organization, or denomination, to different, antagonistic or inconsistent uses and purposes.

2. The defendants, having diverted the property of St. Paul African Union First Colored Methodist Protestant Church to uses and purposes different from, antagonistic to or inconsistent with the uses and purposes of the general church organization known as African Union First Colored Methodist Protestant Church, have no right to such property.

/s/ J. W. Morris
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

Civil Action No. 2960-53

Filed: 25 July 1955

ORDER

Upon the basis of findings of fact and conclusions of law filed herewith, it is by the Court, this 25th day of July 1955,

Ordered:

1. That the defendants immediately cease to use the parcel of real property and the furniture and furnishings there situate at No. 326 I Street, Southeast, in Washington, District of Columbia, in any

manner inconsistent with or for any purposes other than the purposes of the religious denomination known as African Union First Colored Methodist Protestant Church.

2. That the defendants make only such use of the said property as is in conformity with the purposes of said religious denomination.

3. That the defendants pay the costs of this action.

/s/ J. W. Morris
Judge

Delaware Supreme Court Rules

RULE 41.

CERTIFICATION OF QUESTIONS OF LAW

(a) Who May Certify. Any state court and the United States District Court for the District of Delaware may, on motion or sua sponte, certify to this Court for decision a question of law arising in any case before it prior to the entry of final judgment if there is an important and urgent reason for an immediate determination of such question by this Court and the certifying court has not decided the question in the case.

(b) Requirements for Accepting a Certification. Certification will be accepted in the exercise of the discretion of the Court only where there exist important and urgent reasons for an immediate determination by this Court of the questions certified. A certification will not be accepted if facts material to the issue certified are in dispute. A certificate shall state with particularity the important and urgent reasons for an immediate determination by this Court of the question certified. Without limiting the Court's discretion to hear proceedings on certification, the following illustrate reasons for accepting certification:

(i) The question of law is of first instance in this State;

(ii) The decisions of the trial courts are conflicting upon the question of law;

(iii) The question of law relates to the constitutionality, construction or application of a statute of the State

which has not been, but should be, settled by the Court.

(c) Procedure for Certification. The procedure for certification shall be as follows:

(i) A judge of the certifying court shall sign and file with the clerk of that court a certification substantially in the form set forth in Official Form K;

(ii) The clerk of that court shall, within 5 days of the filing of such certification, file with the Clerk of this Court 6 certified copies of the certification and 6 true and correct copies of such of the following papers as may have been filed below:

(A) any Petition for Certification;

(B) any response to the Petition for Certification; and

(C) any stipulation of facts with respect to the Certification;

(iii) Upon the receipt of such copies, the Clerk of this Court shall forthwith docket the proceeding on certification in the same manner as other cases are docketed, shall deliver to each of the Justices 1 copy of the certification and any accompanying papers and shall send written notice to the parties of the filing of such proceeding;

(iv) After docketing and unless otherwise ordered, this Court shall thereupon and without further argument determine whether to accept or refuse the certification. If refused, a certified copy of the order shall be sent to the certifying court and a copy thereof sent to each counsel. If accepted, the proceeding on certification shall be considered to have been duly instituted, and the Clerk shall

send written notice thereof to the parties. The certification as filed shall constitute the record;

(v) From the date of acceptance of certification further proceedings shall be governed by these Rules. Briefs shall be filed in the order recommended by the certifying court in the certification, unless the Court, at the time of approving the certification, shall designate a different order. In any event, insofar as time for filing is concerned, the party or parties required to file the first brief shall be considered the appellant and the other party or parties shall be considered appellee. The caption for papers filed in this Court after acceptance of certification by this Court shall reflect such relationship among the parties.

RULE 42.

INTERLOCUTORY APPEALS

(a) Exercise of Jurisdiction. The Court's jurisdiction to hear and determine appeals in civil cases from interlocutory orders of a trial court, including a trial court acting as an intermediate appellate court in the review of a ruling, decision or order of a court or an administrative agency, shall be exercised in accordance with this rule as to certification and acceptance of interlocutory appeals.

(b) Criteria to be Applied in Determining Certification and Acceptance of Interlocutory Appeals. No interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court determines a substantial issue, establishes a legal right and

meets 1 or more of the following criteria:

(i) Any of the criteria applicable to proceedings for certification of questions of law set forth in Rule 41; or

(ii) The interlocutory order has sustained the controverted jurisdiction of the trial court; or

(iii) An order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or

(iv) The interlocutory order has vacated or opened a judgment of the trial court; or

(v) A review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.

(c) Procedure for Certification of Interlocutory Appeals in the Trial Court. An application for certification of an interlocutory appeal shall be made in the first instance to the trial court in accordance with the following procedures:

(i) Such application shall be served and filed within 10 days of the entry of the order from which the appeal is sought;

(ii) An opposing party shall have 10 days (or such shorter time as the trial court shall in its discretion order, upon notice for good cause shown or upon the trial court's order sua sponte) after such service within which to serve and file a written response or, if the trial court so

directs, present an oral response in lieu of a written response;

(iii) Within 10 days after filing of the response or, if there is none, within 20 days after filing the application, the trial court shall enter an order certifying or refusing to certify the interlocutory appeal;

(iv) Such order shall be substantially in the form set forth in Official Form L, setting forth the basis for the certification and indicating which of the criteria set forth in paragraph (b) of this rule is applicable;

(v) A copy of the application and response referred to in subparagraphs (i) and (ii) of this paragraph shall, concurrently with service and filing, be delivered by the party serving and filing it to the judge of the trial court whose order is sought to be reviewed.

(d) Procedure for Acceptance of Interlocutory Appeals in the Supreme Court. No interlocutory order shall be reviewed by this Court unless the appeal therefrom has been accepted by this Court in accordance with the following procedure:

(i) The notice of appeal may be filed at any time after the filing of the application for certification in the trial court, except that it shall be the obligation of appellant to serve and file in this Court a notice of appeal of an interlocutory order within 30 days after the entry of the order from which the appeal is sought to be taken;

(ii) The notice of appeal and any cross-appeal shall comply with this rule, Rules 6 and 7 of this Court and with such version of Official Form M as shall be applicable to the situation;

(iii) If the notice of appeal is filed before action has been taken by the trial court on the application for certification, appellant shall file a supplementary notice of appeal within 10 days after the expiration of the time periods set forth in paragraph (c) of this rule.

(iv) The notice of appeal and the supplementary notice of appeal, if any, shall include a true and correct copy of such of the following papers as shall have been filed below:

(A) The application for certification;

(B) The interlocutory order from which the appeal is sought to be taken together with any opinion of the trial court with respect thereto;

(C) The written response, if any, to the application for certification, or the transcript, if and when available, of an oral response in lieu of a written response;

(D) The order, if any, of the trial court certifying or refusing to certify the interlocutory appeal and any opinion with respect thereto; and

(E) If no order has been entered by the trial court on the application for certification within 30 days of the entry of the interlocutory order, a separate certificate of appellant's counsel so stating shall be attached.

(v) Unless otherwise ordered, this Court shall thereupon and without further argument determine in its discretion whether to accept or refuse the interlocutory appeal. In exercising that discretion, this Court may consider all relevant factors, including the decision of the trial court whether to certify the

interlocutory appeal.

(vi) From the date of the acceptance of the interlocutory appeal, further proceedings shall be governed by these Rules, except:

(A) The record shall not, in the first instance, be transmitted to the Clerk of this Court. Instead, the respective appendices of the parties, or a joint appendix if one is agreed upon, shall contain such record materials as each party believes relevant to the determination of the issue on appeal. The Court may, at its option, thereafter direct the clerk of the trial court to transmit all of the record, or such portions as the Court deems relevant to consideration of the interlocutory appeal.

(B) The time schedule for the filing of briefs and appendices, pursuant to Rule 15, shall commence upon the third day following the acceptance of the interlocutory appeal.

(vii) If the appeal is refused, a certified copy of the order shall be sent to the trial court and a copy thereof to each counsel.

(e) Continuation of Other Proceedings in the Trial Court. The pendency of proceedings under this rule shall not operate as an automatic stay. Applications for stays shall be processed in the same manner as stays pending appeal under Rule 32.

(f) Failure to Seek or Obtain Review of Interlocutory Order. The failure to seek review of or the refusal of the Court to accept an appeal from an interlocutory order under this rule shall not bar a party from seeking review of such interlocutory order on appeal from the final order, judgment or decree.